REASONS FOR GRANTING THE PETITION

The Supreme Court should grant the petition because:

The Appellate Division of New York State Supreme Court and State of New York Court of Appeals dismissed the appeal upon the ground that the remaining portion of the Order does not finally determine the action within the meaning of the Constitution.

Order of Judgment of Foreclosure and Sale entered December 23, 1999 and Order on March 31, 2004 (entered April 07, 2004) by the Supreme Court of the State of New York, county of Queens were wrong, were made without consideration and examination of the Exhibits of factual evidences presented to the Court, because the mortgage of premises 802 Seneca Avenue was made and created with the fraudulent processes by Delta Funding Corporation and the Kingsland Funding Corporation, in June 10, 1997 [Exhibit "E"] and August 18, 1998 [Exhibit "H"] by failure to pay off the two existing mortgages which took over the Ridgewood Savings Bank from August 14, 1995 for $ 250,000.00. First Mortgage Lender by Gen. Tienchai Sirisumpan in the amount of $ 200,000.00 [Exhibit "B"] and Second Mortgage Lender by S.K.S. Import-Export GMBH in the amount of $ 50,000.00 [Exhibit "C"].

The Delta Funding Corporation created the Covered Loan on August 18, 1998 for premises 802 Seneca Avenue in the fraudulent process by taking over the Originator's Kingsland Funding Corporation fraudulent mortgage on the same premises which was created a year earlier for $ 200,000.00, by the same Law Firm of Wieder & Mastroianni, Attorneys and Settlement Agent who worked

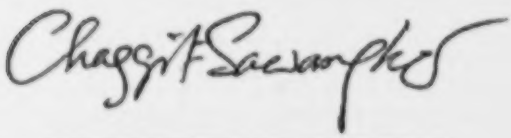
for both Delta Funding Corporation and Kingsland Funding Corporation [Exhibits E & H], therefore established the connection between Delta Funding Corporation and the Kingsland Funding Corporation.

Therefore, the mortgage on premises 802 Seneca Avenue created by the Delta Funding Corporation and the Kingsland Funding Corporation and which was in Judgment of Foreclosure and Sale on December 23,1999, Index No. 5239/99 was fraudulent. The Decisions of these New York State Courts were erroneous. It is also the national importance of having The United States Supreme Court decide the questions involved as for the safety and privilege of the elderly citizens of illiteracy in the real estate knowledge to be protected, according to the Constitution of the United States Amendment 14.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Chaggrit Sawangkao, M.D.

Date: June 25, 2005

APPENDIX A

At an IAS Part 17 of the Supreme Court of the State of New York, held in and for the County of Queens, at the courthouse located at 88-11 Sutphin Blvd, Jamaica, New York on 23rd. day ofDecember,1999.

PRESENT:
HON. ORIN R.KITZES, Justice

Judgment of Foreclosure And Sale:

BANKERS TRUST COMPANY OF CALIFORNIA, N.A. c/o DELTA FUNDING CORPORATION, servicing agent,

Plaintiff,

v.

Index No. 5239/99
Filing: 3/9/99

CHAGGRIT SAWANGKAO, M.D. et al,

Defendant.

On the Notice of Pendency, Summons and Verified Complaint filed herein on the 9th. day of March, 1999 and all proceedings thereon; and on reading and filing the Affirmation of David M. Namm, Esq., an attorney for plaintiffs, dated the 23rd. day of November, 1999, from which it appears that the provisions of the Soldiers' and Sailers' Civil Relief Act of 1940 have been duly complied with, and the Affirmation of David M. Namm, Esq., a support of a request for legal fees, dated the 23rd. day of November, 1999; and upon the Affidavits of Service on each of the defendants herein on file in this action; and upon the Order herein dated the 7th. day of September, 1999, appointing PETER F. VALLONE, JR., Esq. as

Referee to ascertain and compute the amounts due to the Plaintiff for principal, interest and otherwise on the Note and Mortgage set forth in the Verified Complaint and to examine and report whether the mortgage premises can be sold in parcels, and upon all proceedings had herein, from all of whether it appears that this action was brought to foreclose a Mortgage on real property situated in the County of Queens; that the outstanding principal balance secured by said mortgage, to with the sum of Two Hundred Thousand Dollars and 00/ Cents ($ 200,000.00) together with interest thereon and carrying charges expended by Plaintiff is now due and payable; that the Notice of Pendency that herein contains correctly and truly all of the particular required by law to be stated therein; that more than twenty (20) days have elapsed since the filing of such Notice of Pendency; that none of the defendants herein is an infant, incompetent that none of the defendants herein has answered or moved and the time to so answer or move has expired and has not been handed by court order or otherwise; and that no defendant is entitle to notice of this application for Judgment of foreclosure and sale, having either defaulted or having appeared and waived hereof; and upon reading and filing the report of the referee dated the 15th. day of November, 1999, from which it appears that the sum of Two Hundred Thirty-Five Thousand Six Hundred Sixty-Eight Dollars and 24/cents ($235, 668.24) was due to the Plaintiff on the 19th. day of October, 1999 and that the mortgaged premises should be sold in one parcel; and after due deliberation having been had hereon.

Now, on motion of David M. Namm, Esq. attorney for the Plaintiff herein; it is

Ordered, Adjudged And Decreed, that the report of PETER F. VALLONE, JR, Esq., dated November 15, 1999 be and the same is hereby in all respects ratified and confirmed and it is further

Ordered, Adjudged and Decreed, that the mortgaged premises described in the Verified Complaint in this action and as hereafter described, or such part thereof as may be sufficient to discharge the mortgage debt, the expenses of the sale and the costs of this action as provided by the Real Property and Proceedings Law, be sold in one parcel, at public auction at 88-11 Sutphin Blvd., Jamaica, New York by and under the direction of PETER F. VALLONE, JR.,Esq. who is hereby appointed Referee for the purpose; that the said referee give public notice of time and place of such said in accordance with RPAPL section 231 in Newsday 235 Belville, N.Y. 11747 and that the plaintiff or any other parties in this action may become the purchaser at such said that in case the plaintiff shall become the purchaser at the sale, it shall not be required to make any deposit thereon; that the Referee execute to the purchaser or purchasers on such a deed of the premises sold; that in the event a party other than the plaintiff become the purchaser or purchasers at such sale, the closing of title shall be had thirty days after such sale unless otherwise stipulated by all parties to the sale; and it is further

Order, Adjudged And Decreed, that the said Referee on receiving the proceeds of such sale shall forthwith pay therefrom, in accordance with their priority according to law, the taxes, assessment, sewer rents or water or may become liens on the premises at the time of sale with such interest or penalties which may have lawfully accrued thereon to the date of payment; and it is further

Ordered, Adjudged and Decreed that said Referee then deposit the balance of said proceeds of sale in his or her own name as Referee in the HSBC, 147-02 Hillside Ave., Jamaica, N.Y.Bank, and shall thereafter make the following payments and his/her checks drawn for that purpose shall be paid by said depository;

FIRST: The statutory fees of said Referee, in the sum of $ 500.00.

Second: The expenses of the sale advertising expenses as shown on the bills presented and certified by the said Referee to be correct, duplicate copies of which shall be annexed to the report of sale.

Third: Said Referee shall also pay to the plaintiff or plaintiff's attorney the sum of $ 1,000.00 adjudged to the plaintiff for costs and disbursements in transaction ato be taxed by the clerk and inserted herein, with interest thereon from the date hereof; together with an additional allowance of $ N/A hereby awarded to the plaintiff in addition to costs with interest thereon from the date hereof; and also athe sum of $ 235, 668.24 the said amount so reported due as aforesaid, together with interest thereon from October 19, 1999, the date interest was calculated to in said report, or so much thereof as the purchase money of the mortgage premises will pay of said sum; together with $ 2500.00 hereby awarded to plaintiff as reasonable legal fees herein; together with any advances as provided for in the note and mortgage, which plaintiff has made to taxes, insurance, principal and interest and any other due to prior mortgages, or to maintain the premises pending consummation of this foreclosure sale, not previously included in the computation and upon presentation of receipts for said expenditures to the Referee, all together with interest thereon pursuant to the note and mortgage.

FOURTH: If such Referee intended to apply for further allowance for his/her fees, and application shall be made to the Court therefore upon due notice to these parties entitle thereto.

That in case the Plaintiff be the purchaser of said mortgaged premises at said sale, or in the event that the rights of the purchasers at said sale and the terms of sale under this judgment shall be assigned to and be acquired by the plaintiff and the valid assignment thereof filed with said Referee; and Referee shall not require the plaintiff to pay in cash the entire amount bid at said sale but shall execute and deliver to the plaintiff or its assignee, a Deed or Deeds of the premises sole upon the payment to said Referee of the amounts specified above in the items marked, "FIRST" and "SECOND" and the amount of the aforesaid taxes, assessments, sewer rents and water paid, with interest and penalties thereon, or in lieu of the payment of said last mentioned amounts, upon filing with said Referee receipts of the proper municipal authorities showing payment thereof; that the balance of the amount bid, after deducting there from the aforesaid amounts paid by-the Plaintiff for Referee's fees, advertising expenses, taxes, assessments, sewer rents and water rent, shall be allowed to the Plaintiff and applied by said Referee upon the amounts due to the plaintiff as specified in the item marked "third"; that if after so applying the balance amount sold there shall be surplus over and above said amounts due to the Plaintiff, the plaintiff shall pay to said Referee, upon delivery to it of said Referee's Deed, the amount of such surplus that said Referee on receiving the said several amounts from the Plaintiff shall forthwith pay therefrom said taxes, assessments, sewer rents, water rates with interest and penalties thereon; unless the same shall have already been paid and shall then deposit the balance.

That said Referee take the receipt of the Plaintiff or Plaintiff's attorney for the amounts paid as hereinbefore directed in item marked "Third" and file it with his report of sale; that he deposit the surplus money, if any, with the Clerk of the County of Queens within Five (5) days after the same shall be received and be ascertainable, to the credit to this action to be withdrawn only on the Order of the Court, signed by a Justice of the Court; that said Referee shall make his/her report of the sale under oath showing the disposition if the proceeds of the sale and accompanied by the vouchers of the person to whom the parties were made and file it with the Clerk of the County of Queens within thirty days after completing the sale and executing the proper conveyance to the purchaser; that if the proceeds of such sale be insufficient to pay the amounts so reported due to the Plaintiff with the interest and cost as aforesaid, the Plaintiff shall recover from the defendant the whole deficiency of so much thereof and the Court may determine to be just and equitable of the residue at the mortgage debt remaining unsatisfied after a sale of the mortgaged premises and the application of the proceed thereof, provided a motion for a deficiency judgment shall be made as prescribed by Section 1371 of the Real Property Action and Proceedings Law within the time limited therein, and the amount thereof is determined and awarded by an order of this Court as provided for a said section; and it is further

Ordered, Adjudged and Decreed that the purchaser or purchasers at said sale be let into possession on proclaimation or delivery of the Referee's Deed; and it is further

Ordered, Adjudged and Decreed that each and all of the Defendants in this action and all persons dwelling under them, or any or either of them, after filing of the Notice of

Pendency in this action be and they are hereby forever barred and foreclosed of all right, claim, lien, title, interest and equity of redemption in said mortgaged premises and each and every paid thereof; and it is further

Ordered, Adjudged And Decreed, that said premises is to be sold in one parcel in "as is" physical order and condition, subject to any state of facts that an inspection of the premise would disclose; any state of facts that an accurate survey of the premises would show; any covenants, restrictions, declarations, reservations, basement, rights of way and public utility agreements of record; any building and zoning ordinances of the municipality in which the mortgaged premises is located and any violations of same; any rights of tenants or person in possession of the subject premises; prior liens of record, if any except those liens addressed in section 1354 of Real Property Actions and Proceeding Law; any apply of redemption of the United State of America to redeem the premises within 120 days from the date of sale; and it is further

Ordered, Adjudged, And Decreed, that all expenses of recording the Referee's Deed, including real property transfer tax and transfer stamps, shall be borne by the purchaser.

Said premises commonly known as 802 Seneca Avenue, Ridgewood, New York 11385.

A description of the said mortgage premises is annexed hereto and made a part hereof as Schedule "A".

ENTER,

"s/ Hon. Orin R. Kitzes, Justice".
Justice – Supreme Court.

G. D'Anuto, County Clerk
DEC. 23, 1999 Queens Court.

The premises are described as follows:

All that certain, plot, piece or parcel of land, with the buildings and improvement thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southwesterly side of Seneca Avenue (former Covert Avenue) with the southeasterly side of Putnam Avenue;

RUNNING THENCE southeasterly along the southwesterly side of Seneca Avenue, 25 feet,

THENCE southwesterly parallel with Putnam Avenue and part of the distance through a party wall, 90 feet;

THENCE northwesterly and parallel with Seneca Avenue, 25 feet to the southeasterly side of Putnam Avenue;

THENCE northeasterly along the southeasterly side of Putnam Avenue, 90 feet to the point or place of BEGINNING.

SAID PREMISES BEING KNOWN AS 802 Seneca Avenue, Ridgewood, New York 11385.
Located in BLOCK 3461, LOT 24. Borough and County of Queens, City and State of New York.

APPENDIX B

STATE OF NEW YORK,
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City Of Albany on the fifth day Of April, 2005.

Present, Hon. Judith S. Kaye, Chief Judge, presiding.

---

2 – 11 Mo. No. 206

Bankers Trust Company of California, N.A., &c.,

Respondents,

v.

Chaggrit Sawangkao,

Appellant/Defendant.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

Ordered, that the said motion, insofar as it seeks leave to appeal from that portion of the Appellate Division order that dismissed the appeal from the judgment of foreclosure and sale, be and the same hereby is dismissed upon the ground that this Court does not have jurisdiction to entertain the motion from the Appellate Division order dismissing the appeal to that court from a determination entered on default (see, CPLR 5511); and it is

Ordered, that the said motion for leave to appeal otherwise be and the same hereby is dismissed upon the ground that the remaining portion of the Appellate Division order does not finally determine the action within the meaning of the Constitution.

"s/ Stuart M. Cohen".

Clerk of the Court

APPENDIX C

Supreme Court of the State of New York
Appellate Division: Second Judicial Department.

M 19492
S/nal

FRED T. SANTUCCI, J.P.
DANIEL F. LUCIANO
ROBERT A. SPOLZINO
STEVEN W. FISHER, JJ.

2004-10110, 2004-10111 DECISION & ORDER ON MOTION

Bankers Trust Company of California, N.A., Etc., respondent, v Chaggrit Sawangkao, appellant, Et al., defendants.
(index No. 5239/99)

On the court's own motion, it is

ORDERED that decision and order on motion dated December 14, 2004, in the above-entitle case is recalled and vacated, and the following decision and order on motion is substituted therefore:

Motion by Chaggrit Sawangkao on appeals from a judgment of the Supreme Court, Queens County, entered December 23, 1999, and an order of the same court dated March 31, 2004, for leave to appeal to this court from the judgment, and, in effect, for summary reversal of the judgment and the order.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the branch of the motion which is for leave to appeal from the judgment is denied; and it is further,

ORDERED that on the court's own motion, the appeal taken as of right is dismissed, without costs or disbursements, as no appeal lies from a judgment entered on the default of the aggrieved party(see CPLR5513); and it is further,

ORDERED that the appeal taken as of right from the order is dismissed, without costs or disbursements, as that appeal was untimely taken(see CPLR 5513); and it is further,

ORDERED that the motion is otherwise denied as academic.

SANTUCCI, J.P., LUCIANO, SPOLZINO and FISHER, JJ., concur.

ENTER:

"s/ James Edward Pelzer".

Clerk of the Court.

APPENDIX D

At an IAS Part 17 of the Supreme Court of the State of New York, held in and for the County of Queens, at the courthouse located 88-11 Sutphin Blvd, Jamaica, NY on the 31st day of March, 2004.

PRESENT: Hon. Orin R. Kitzes, Justice

Bankers Trust Company of California, N.A. c/o Delta Funding Corporation, servicing agent, Plaintiff,

-against-

Chaggrit Sawangkao, M.D. et al, Defendant.

Index No. 5239/99

ORDER

Entered QueensCourt CountyClerk April 7, 2004

Upon the reading and filing of the Order to show Cause dated February 10, 2004, including the Affirmation of Paul Golden, affirmed to the 29th. day of January, 2004, and the affidavit of Steven Sfera (President of NYC Property Rehab. Corp. sworn to on the 29th. day of January, 2004, the exhibit annexed thereto, and the reading and filing of Chaggrit Sawangkao's affidavit in opposition dated February 16, 2004, and the reading and filing of the reply affirmation of Paul Golden, affirmed to on February 24, 2004 and the matter coming on to be heard before these court on February 25, 2004 at Part 17, and Paul Golden, Esq. having appeared for the owner of the premises, NYC Property Rehab. Corp., and Defendant Chaggrit Sawangkao appearing Pro Se, and due deliberation having been made thereon, and the court having issued a memorandum dated February 27, 2004.

NOW, upon motion of Hagan, Coury & Associates, attorneys for the owner of the premises, it is

ORDERED that the motion for a Writ of Assistance is granted; and it is further,

ORDERED that the sheriff of the County of Queens be and is hereby directed upon service of a copy of this Order and upon expression of 30 days stay commencing from the date of service of this Order to enter upon the premises hereinaiter described and eject from premises Chaggrit Sawangkao, and every person holding the same or any part thereof under him adversely to NYC Property Rehab. Corp., and to put NYC Property Rehab. Corp. into possession of said premises, and that this Order be executed by said sheriff as if it were an execution for the delivery and the possession of said premises.

The premises are described as follows: the premises located at and known as 802 Seneca Avenue, Ridgewood, New York, located in Block 3461, Lot 24, more fully described as:

All that certain, plot piece or parcel of land, with the buildings and improvement thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southwesterly side of Seneca Avenue (formerly Covert Avenue) with the southeasterly side of Putnam Avenue;

RUNNING THENCE southeasterly along the southwesterly side of Seneca Avenue, 25 feet,

THENCE southwesterly parallel with Putnam Avenue and part of the distance through a party wall, 90 feet;

THENCE northwesterly and parallel with Seneca Avenue 25 feet to the southeasterly side of Putnam Avenue;

THENCE northeasterly along the southeasterly side of the Putnam Avenue, 90 feet to the point or place of BEGINNING.

And it is further

ORDERED, that non party NYC Property Rehab. Corp. shall serve a copy of this order with notice on the residents of premises known as 802 Seneca Avenue, Ridgewood, New York, within five (5) days of the date of entry of this order.

ENTER

"s/ HON. ORIN R. KITZES"

J.S.C.

APPENDIX E

The Constitution of The United States
AMENDMENT 14 (1868), CITIZENS' RIGHTS

SECTION 1, Any person born or naturalized in the United States and governed by it is a citizen of the United States and of the state in which he resides (lives).

No state can make laws that abridge (take away or restrict) any right, privilege, or protection of citizens of the United States; nor pass laws that may cost a person his life, imprison him, unless he has been found guilty of a crime in a court of law by due process of law (following fair legal practice based upon fair laws).

No state may deny any person, under its government, equal protection of the law.

APPENDIX F

EXHIBIT B

DOMINICK J. MASIELLO
ATTORNY AT LAW

66-10 Forest Avenue
Ridgewood, New York 11385

718-386-0342

August 14, 1995
Chaggrit Sawangkao
802 Seneca Avenue
Ridgewood, New York 11385

RE: Satisfaction of Mortgage
Ridgewood Saving Bank-to-Sawangkao
And Ventimiglia & Dye-to- Sawangkao

PAID OFF BY: NEW MORTGSGE LENDER
Gen. Tienchai Sirisumpan
As FIRST MORTGAGE
Amount: $ 200,000.00

ON Premises: 802 Seneca Avenue
Ridgewood, New York 11385

"s/ Dominick J. Masiello".

EXHIBIT C

NEW SECOND MORTGAGE

ON Premises: 802 SENECA Avenue, Ridgewood, N.Y.

Mortgage Lender: S.K.S. IMPORT-EXPORT GMBH
LOAN AMOUNT: $ 50,000.00

Date: 02/29/1996
To: Chaggrit Sawangkao, M.D.

Teller's Check: Serial No. 002183 Date: 02/29/1996
Chemical Bank Account No. 005067259465
55 Water Street
New York, N.Y. 10041-0199

EXHIBIT E

ITEMIZATION OF AMOUNT FINANCED

Dated: June 10, 1997

CREDITOR:
Kingsland Funding Corporation
238 East 53rd. Street
New York, N.Y. 10022
Chief Loan Officer: Michael Hershkowitz.

On Premises: 802 SENECA AVENUE
Ridgewood, N.Y. 11385
Owner: Chaggrit Sawangkao

NET LOAN : $ 165,000.00
Disbursement Payee: _____

1, Mincone, Mincone & Tanen, L.L.C. $ 1,000.00
2, Kingsland Funding Corp.---------- $ 22,275.00
3, Kingsland Group, Inc. ---------- $ 1,466.00
4, J.C. Land Abstract, Inc. ---------- $ 18,598.00
5, NYCTL 1996-TRUST ---------- $ 43,522.05
6, TITLE Closure Maula Delisle------- $ 600.00
7, John Struse & Thomas E. Britt as
Attorney. ---------- $ 5,000.00
8, American Funding Corp. ---------- $ 22,275.00

9, NYC Dept. of Finance. ---------- $ 8,065.43
10, NYC Dept. of Environmental
Protection. ---------- $ 22,394.52
11, Wieder & Mastroianni, Attys. ------- $ 1,500.00
12, Servico, Inc. ---------- $ 333.46
13, Camille Costa Insurance ---------- $ 1,638.00
14, Marie Gay (Appraisal) ---------- $ 150.00
15, Commission of Taxation & Finance $ 14,729.51
16, Chaggrit Sawangkao ---------- $ 1,452.36
Total Disbursement ----- $ 165,000.00

EXHIBIT G

NYC DEPT. OF ENVIRONMENTAL PROTECTION

(DEP)

Chaggrit Sawangkao
802 Seneca Ave.
Ridgewood, N.Y. 11385

NYC WATER BOARD
PO. Box 410
Church St. Station
New York, N.Y. 10008

Account No. 50005-98935-001

BILL DATE : September 11, 1995

Payment Due By: October10, 1995
Amount Due: $ 2,116.64

Total Amount Due: $ 2,116.64

EXHIBIT H

Delta Funding Corporation
SETTLEMENT STATEMENT

BORROWER:	Property Location:
Chaggrit Sawangkao	802 Seneca Ave.
802 Seneca Avenue	Ridgewood, N.Y.11385
Ridgewood, N.Y. 11385	
LENDER:	SETTLEMENT AGENT:
Delta Funding Corporation	Wieder & Mastroianni
1000 Woodbury Road,	1000 Woodbury Road
Woodbury, New York 11797	Woodbury, N.Y. 11797

SETTLEMENT DATE: August 18, 1998

Settlement Charges to Borrower ----------	$ 17, 322.67
Kingsland Funding Mortgage ----------	$ 180,000.00
Cross County Bank ---------	$ 398.00
Merridian Bank ---------	$ 339.00
Capital One Bank ---------	$ 295.00
Gross Amount Due From Borrower	$ 198,349.60
Principal Amount of New Loan	$ 200,000.00

No. 05-251

Supreme Court, U.S.
FILED
SEP 22 2005
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

CHAGGRIT SAWANGKAO, M.D.,

Petitioner,

v.

BANKERS TRUST COMPANY OF CALIFORNIA, N.A. c/o DELTA FUNDING CORPORATION, servicing agent, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE STATE OF NEW YORK COURT OF APPEALS

BRIEF IN OPPOSITION

JONATHAN I. ULLMANN
PETER T. ROACH AND ASSOCIATES, P.C.
100 Jericho Quadrangle, Suite 215
Jericho, New York 11753
(516) 938-3100

Attorneys for Wells Fargo Bank, N.A., successor by merger to Wells Fargo Bank Minnesota, N.A., f/k/a Norwest Bank Minnesota, N.A., as Trustee under the Pooling and Servicing Agreement, dated as of September 29, 1998, Delta Funding Home Equity Loan Trust 1998-3; successor in interest to Bankers Trust Company of California, N.A. as Trustee under the Pooling and Servicing Agreement, dated as of September 29, 1998, Delta Funding Home Equity Loan Trust 1998-3, c/o Delta Funding Corporation, servicing agent

196851

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

The petitioner fails to set forth any questions presented in his Petition for Writ of Certiorari as required by Rule 14.1(a) of the Rules of the Supreme Court of the United States. All petitioner does is provide a list, without more, referencing the judgment of foreclosure and sale entered by the New York State Supreme Court, County of Queens; the decision of the State of New York Court of Appeals; the decision and order on motion of the Supreme Court of the State of New York, Appellate Division: Second Judicial Department; and the order of possession of the Supreme Court of the State of New York, County of Queens.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States, Wells Fargo Bank, N.A., successor by merger to Wells Fargo Bank Minnesota, N.A., f/k/a Norwest Bank Minnesota, N.A. ("Wells Fargo Bank"), as Trustee under the Pooling and Servicing Agreement, dated as of September 29, 1998, Delta Funding Home Equity Loan Trust 1998-3; successor in interest to Bankers Trust Company of California, N.A. as Trustee under the Pooling and Servicing Agreement, dated as of September 29, 1998, Delta Funding Home Equity Loan Trust 1998-3, c/o Delta Funding Corporation, servicing agent, hereby discloses that Wells Fargo Bank (who acted as trustee for the said trust) is a wholly-owned subsidiary of Wells Fargo & Company, a publicly traded company. Currently, no publicly held company owns more than ten percent (10%) of Wells Fargo & Company's common stock.

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INTRODUCTION

Wells Fargo Bank, N.A., successor by merger to Wells Fargo Bank Minnesota, N.A., f/k/a Norwest Bank Minnesota, N.A., as Trustee under the Pooling and Servicing Agreement, dated as of September 29, 1998, Delta Funding Home Equity Loan Trust 1998-3; successor in interest to Bankers Trust Company of California, N.A. as Trustee under the Pooling and Servicing Agreement, dated as of September 29, 1998, Delta Funding Home Equity Loan Trust 1998-3, c/o Delta Funding Corporation, servicing agent ("The Trust" and/or "respondent")[1] respectfully opposes the petition for writ of certiorari ("Petition").

The New York Court of Appeals dismissed petitioner's motion for leave to appeal from that portion of the New York Supreme Court, Appellate Division order that dismissed the appeal from the judgment of foreclosure and sale, upon the ground that that court does not have jurisdiction to entertain the motion from the Appellate Division order dismissing the appeal to that court from a determination entered on default.

The New York Court of Appeals further dismissed the said motion for leave to appeal upon the ground that the remaining portion of the Appellate Division order does not

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1. Petitioner appears to have provided an incorrect name for The Trust throughout his Petition. The party in interest in the underlying New York State Court foreclosure action was The Trust. Bankers Trust Company of California, N.A. only acted in its capacity as the trustee for The Trust. Sometime after the Judgment of foreclosure and sale was entered, the subject mortgage loan was further assigned to Wells Fargo Bank, N.A., successor by merger to Wells Fargo Bank Minnesota, N.A., f/k/a Norwest Bank Minnesota, N.A., as Trustee under the Pooling and Servicing Agreement, dated as of September 29, 1998, Delta Funding Home Equity Loan Trust 1998-3, and this was the entity who subsequently received the mortgage pay off funds from the proceeds of the foreclosure sale.

finally determine the action within the meaning of the New York State Constitution. The New York Court of Appeal's decision is correct and no appeal from it lies to this Court.

STATEMENT OF THE CASE

The underlying litigation which eventually culminated in the decision of the New York Court of Appeals emanates from a now fully completed foreclosure action filed in 1999 in the Supreme Court of the State of New York, County of Queens, entitled *Bankers Trust Company of California, N.A. as Trustee under the Pooling and Servicing Agreement, dated as of September 29, 1998, Delta Funding Home Equity Loan Trust 1998-3, c/o Delta Funding Corporation, servicing agent v. Chaggrit Sawangkao, a/k/a Chaggrit Sawangkao, MD, The City of New York Parking Violations Bureau, Amyra Singh, Rupo Singh and Mario Lennadez*, under Index No. 5239/99 ("the foreclosure action")[2].

The foreclosure action was brought to foreclose for nonpayment, on a mortgage that was originated on August 18, 1998, when The Trust's assignor, Delta Funding Corporation, loaned the petitioner two hundred thousand ($200,000.00) dollars, in return for a note executed by petitioner. Said note was secured by a mortgage on petitioner's property, known as and by 802 Seneca Avenue, Ridgewood, New York ("the subject property"). The above note and mortgage called for the repayment of the principal sum on a monthly basis over 30 years ("the mortgage loan"). Significantly, following the origination of the mortgage, petitioner failed to make any of the required monthly payments and the foreclosure action was commenced in March of 1999.

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2. No other parties were named in the foreclosure action. Petitioner failed to comply with Rule 14.1(b) of this Court by listing parties, in his "List Of Parties" of his Petition, who were not parties to the proceeding in the court whose judgment is sought to be reviewed.

Petitioner did not appear or answer in the foreclosure action and on December 23, 1999, a judgment of foreclosure and sale was entered on default in the Supreme Court of the State of New York, Queens County ("judgment of foreclosure and sale"). Following the entry of the judgment of foreclosure and sale, nine foreclosure sales were scheduled and advertised. Seven of those foreclosure sales were then cancelled due to petitioner or a deed transferee by the name of "William Travis", filing sequential bankruptcy petitions in the United States Bankruptcy Court for the Eastern District of New York. However, on or about June 16, 2003, the said Bankruptcy Court, in *In Re: William H. Travis, Jr.*, Case No. 803-81623-288 (Bernstein, U.S.B.J.) entered an order, pursuant to 11 U.S.C. § 1307, dismissing the Travis bankruptcy petition with prejudice prohibiting both petitioner and William Travis from filing another bankruptcy under any chapter for 180 days.

Separately, one of the above mentioned nine foreclosure sales was cancelled when petitioner voluntarily entered into a forbearance agreement, which he signed on January 11, 2001, with The Trust by its then mortgage servicing agent Delta Funding Corporation ("Delta")[3]. The forbearance agreement ("the agreement") between petitioner and Delta on behalf of The Trust provided a way for petitioner to avoid the sale of his house at foreclosure. In the agreement under

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3. We note that Delta, who originated the subject mortgage loan, also acted as the mortgage servicing agent for the subject mortgage loan until May 4, 2001, when Ocwen Federal Bank FSB (now known as Ocwen Loan Servicing LLC, as successor to Ocwen Federal Bank FSB) ("Ocwen") took over the servicing of the subject mortgage loan. While petitioner does not list Delta as one of the parties on the "List Of Parties" in his Petition, he does refer to Delta separately as a "respondent" in other parts of his Petition, *e.g.* at pp. 7 and 8. Inasmuch as Delta was not a named party to the foreclosure action and the judgment of foreclosure and sale was not entered in Delta's favor, it cannot be made a "respondent" to the Petition. Nor does Delta have any interest in the mortgage loan.

paragraph 15, petitioner, among other things, agreed, post judgment of foreclosure and sale, to accept service of the summons and complaint and waive any and all rights and defenses to contest the foreclosure proceedings.

Petitioner now, with this Petition and all of his previous motions, apparently seeks to reverse the judgment of foreclosure and sale, which he actually confirmed and ratified for all practical purposes under the forbearance agreement. Petitioner defaulted and did not make the payments called for by the agreement. A foreclosure sale of the subject property finally and at long last took place on July 25, 2003. The subject property was struck down and sold at public auction to the highest bidder, NYC Property Rehab. Corp. ("purchaser")[4].

However, a closing did not occur immediately following the sale as petitioner filed an order to show cause in New York Supreme Court, Queens County, seeking to vacate the judgment of foreclosure and sale and the sale itself on what appeared to be allegations of fraud. Opposition to petitioner's order to show cause was submitted by The Trust and in an order dated October 24, 2003, the New York Supreme Court, Queens County, by Orin Kitzes, J., denied petitioner's order to show cause in all respects. Finally, a referee's deed in foreclosure was delivered to the purchaser on September 17, 2003.

Separately, petitioner filed an affirmative suit against The Trust, Delta and Ocwen in the New York Supreme Court, Queens County, in an action entitled *Chaggrit Sawangkao, M.D. v. Delta Funding Corp., Bankers Trust Co. of California, Ocwen Federak Bank, FSB*, under Index No.

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4. Petitioner names the purchaser as a "respondent" herein, even though it was not a named party to the judgment of foreclosure and sale.